

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

FREDRICK D. SCOTT,

Petitioner,

vs.

GREG SMITH, et al.,

Respondents.

3:10-cv-00754-LRH-VPC

ORDER

The petitioner has presented the Court with a motion to proceed *in forma pauperis*, a motion for appointment of counsel and petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (received December 3, 2010) (docket #1).

The petitioner's application to proceed *in forma pauperis*, including the financial certificate, establishes that the petitioner qualifies for *in forma pauperis* status. He shall be granted leave to proceed *in forma pauperis*, and shall not be required to pay the filing fee for his habeas corpus petition. The motion and petition will be ordered filed and docketed. The motion for appointment of counsel shall be denied.

There is no constitutional right to appointed counsel for a federal habeas corpus proceeding. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th Cir. 1993). The decision to appoint counsel is generally discretionary. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986), *cert. denied*, 481 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir.), *cert. denied*, 469 U.S. 838 (1984). However, counsel must be appointed if the complexities of the case are such that denial of counsel would amount to a denial of due process, and where the petitioner is a person

1 of such limited education as to be incapable of fairly presenting his claims. See *Chaney*, 801 F.2d at  
2 1196; see also *Hawkins v. Bennett*, 423 F.2d 948 (8th Cir. 1970). The claims in this case are not  
3 especially complex. Also, the Court notes from the state, and from the other documents that petitioner  
4 has submitted to the Court, that petitioner is able to present matters to the Court in an organized and  
5 understandable manner, if he desires. Petitioner's motion shall be denied.

6 **IT IS THEREFORE ORDERED** that petitioner's application to proceed *in forma pauperis*  
7 (docket #1) is **GRANTED**. Petitioner shall not be required to pay a filing fee to file his habeas corpus  
8 petition.

9 **IT IS FURTHER ORDERED** that the motion for appointment of counsel shall be **filed and**  
10 **docketed** by the Clerk and is **denied**.

11 A petition for federal habeas corpus should include all claims for relief of which petitioner is  
12 aware. If petitioner fails to include such a claim in his petition, he may be forever barred from seeking  
13 federal habeas relief upon that claim. See 28 U.S.C. §2254(b) (successive petitions). If petitioner is  
14 aware of any claim not included in his petition, he should notify the Court of that as soon as possible,  
15 perhaps by means of a motion to amend his petition to add the claim.

16 **IT IS FURTHER ORDERED** that the Clerk shall **FILE** and **ELECTRONICALLY SERVE**  
17 the petition (docket #1) upon the respondents.

18 **IT IS FURTHER ORDERED** that respondents shall have **forty-five (45)** days from entry of  
19 this order within which to answer, or otherwise respond to, the petition. In their answer or other  
20 response, respondents shall address any claims presented by petitioner in his petition as well as any  
21 claims presented by petitioner in any Statement of Additional Claims. Respondents shall raise all  
22 potential affirmative defenses in the initial responsive pleading, including lack of exhaustion and  
23 procedural default. **Successive motions to dismiss will not be entertained**. If an answer is filed,  
24 respondents shall comply with the requirements of Rule 5 of the Rules Governing Proceedings in the  
25 United States District Courts under 28 U.S.C. §2254. If an answer is filed, petitioner shall have **forty-**  
26 **five (45) days** from the date of service of the answer to file a reply.

27 **IT IS FURTHER ORDERED** that, henceforth, petitioner shall serve upon the Attorney General  
28 of the State of Nevada a copy of every pleading, motion, or other document he submits for consideration

1 by the Court. Petitioner shall include with the original paper submitted for filing a certificate stating  
2 the date that a true and correct copy of the document was mailed to the Attorney General. The Court  
3 may disregard any paper that does not include a certificate of service. After respondents appear in this  
4 action, petitioner shall make such service upon the particular Deputy Attorney General assigned to the  
5 case.

6 Dated this 15th day of December, 2010.

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LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE  
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